

costs. When avoided return and taxes of \$678,000 are added to the avoided direct and indirect expenses, the avoidable expense for the Oklahoma jurisdiction totals \$112,198.00.

In the wholesale discount calculation of total avoidable expense divided by revenues, the Arbitrator recommends inclusion of intrastate access revenues along with local and long distance revenues all of which reasonably reflect the Oklahoma Jurisdiction revenues for a total of \$565,125,000. When support costs incurred by SWBT for the wholesale business are subtracted, the wholesale discount for resale is 19.8%.

With respect to the issue of applying an avoided cost discount to services that are priced on an individual customer basis (see Testimony of Mr. Jackson regarding the Plexar Custom example), the Arbitrator acknowledges that the intent of the Telecommunications Act of 1996 is, at least in part, to establish a level playing field and a competitively neutral environment to facilitate competition. To allow the application of an avoided cost discount to services priced on an individual customer basis, which results in the services being provided by a LEC below cost, is not facilitating the competitively neutral environment that is critical to bring about competition. Therefore, the Arbitrator recommends that for such services, the Commission not require any discount be applied that would cause the wholesale price to fall below the incumbent LEC's cost.

B. Interim Rates for Unbundled Elements, Etc.

The parties have stipulated that until SWBT completes appropriate cost studies and submits them to the Commission and AT&T for review, until AT&T has an opportunity to complete another Hatfield study, if desired, and until the final resolution of the FCC Order in the 8th Circuit is reached, the interim rates should be adopted by the Commission, with a true-up once permanent rates are established at a subsequent hearing.

Summary of AT&T testimony: AT&T proposed interim rates through the supplemental testimony of witness Robert Flappan. According to Mr. Flappan, his proposed interim rates meet the requirements of OAC 165:55-17-27. Mr. Flappan recommended that the interim rates for loop-related elements should be geographically deaveraged by density zones. The cost for loops is caused by the end-user subscriber who is served by the loop who can be identified as residing in a particular density zone. The "cost causer" for the other elements are many users spread across wide geographic areas. According to Mr. Flappan, it made little sense to deaverage rates for these other elements.

AT&T is proposing rates for the twelve unbundled elements for which it has been advocating. In addition, AT&T is proposing interim rates for the additional elements contained in the direct testimony of Mr. Eugene Springfield filed on September 9, 1996.

After setting forth the specific rates, Mr. Flappan testified there is no need for these zones to match up with SWBT's rate bands of existing wire centers. The rates set forth would be offered to other providers of local service, not directly to existing retail or business customers served by SWBT. The new entrants are capable of being able to package innovative offerings to Oklahoma consumers without being restricted to rates based on SWBT's current retail rates. In fact, SWBT's current rate band structure is based on value of service pricing which is not cost based. One wire center may contain customers from all six cost base density zones being advocated by AT&T. At a minimum, the FCC Order required unbundling into three zones based on costs.

Mr. Flappan proposed two rates for each of the cross-connect elements proposed by SWBT because SWBT and AT&T had opposing views as to what the cross-connect element involves. It was the opinion of AT&T that a cross-connect requires only an inexpensive cross-connect wire, an inexpensive connector base and blocks, and an inexpensive amount of cable. There is no maintenance required on the equipment and it is almost all reusable if a customer leaves the network. SWBT included testing equipment, which AT&T does not want, in the price of their cross-connects.

Where Mr. Flappan did not accept the non-recurring rates proposed by SWBT, he took the cost based rates made public by SWBT in the Texas Arbitration proceeding. For example, for the basic rate interface 2-wire, AT&T proposed a nonrecurring rate which came from Texas which was \$39.30. In Oklahoma, SWBT proposed a \$118 rate for basic interface 2-wire. Another example was the additional basic rate interface 2-wire where the Texas rate was \$6.05 as compared to the Oklahoma proposed rate of \$61.85.

Summary of SWBT testimony: SWBT proposed interim rates through the supplemental testimony of witness Eugene Springfield. Mr. Springfield proposed interim rates for unbundled network elements. Where forward-looking cost studies had been conducted for unbundled elements, Mr. Springfield proposed that the interim rates be based on those cost studies. Where no such studies are available, he proposed other bases for interim rates, including tariff and contract rates for comparable services. All interim rates would be subject to true up.

Mr. Springfield also proposed that interim rates for unbundled elements be based on three geographically deaveraged zones. This was proposed to take into account longstanding Oklahoma ratemaking policies. In Oklahoma, rates for local exchange services are uniform within each exchange, but different among various exchanges, which are grouped by size in terms of exchange access lines. SWBT's proposal for three zones is to continue this existing Commission policy by deaveraging unbundled loops between exchanges, but retaining uniform rates within each exchange.

Mr. Springfield also proposed interim transport and termination rates. To the extent the functions of certain unbundled network elements are used for terminating a local exchange call on a carrier's network, the price structure adopted for those unbundled elements should also apply to the transport and termination of local traffic. SWBT's proposed rate, for local exchange calls originated on AT&T's network, is comprised of the unbundled elements of local switching, tandem switching and interoffice transport (common transport and dedicated transport).

Mr. Springfield proposed that the Commission determine that except for Cellular Mobile Radio Service, reciprocal transport and termination rates apply within a geographic territory delineated as an exchange area under a SWBT tariff approved by the Commission. He proposed that exchange areas be defined to include the geographic territory within which SWBT and user subscribers pay a uniform set of charges for local telecommunications service to and from all other SWBT and users in that geographic area.

Mr. Springfield also explained that the "bill and keep" method proposed by AT&T is inappropriate for interim rates. First, the reciprocal rates for both carriers must be the same. Second, the volume between carriers must be balanced. Neither condition is likely to be present with respect to AT&T and SWBT.

Mr. Springfield also proposed that all currently effective interstate and intrastate access charges, as appropriate, apply to access service traffic which traverses SWBT's local switches. He also proposed a rate equal to SWBT's proposed unbundled tandem switching rate for intermediate transport of local traffic.

Findings and Recommendations: The Arbitrator does not recommend any particular methodology or cost study be adopted at this time. The Arbitrator does adopt SWBT's proposed rates on the basis that if a true-up is needed in the future it would be easier to explain to customers rather than trying to explain a lower price being true-up to a higher price.

VII. Reciprocal Compensation

The parties were unable to agree on the method of compensation to apply to transport and termination of local exchange traffic. In its application for arbitration, AT&T requested that the Commission adopt a method of reciprocal compensation which calls for the mutual exchange of traffic without charge or, "bill-and-keep" for a period of at least 18 months. After that period of time, bill-and-keep would remain in place until there was a demonstrated imbalance of traffic. Further, AT&T requested that SWBT be required to implement AT&T's bill-and-keep method for all areas covered by a mandatory or optional WACP or EAS arrangement or any other plan that expands the free calling area covered by a flat-rate plan. SWBT responded that bill-and-keep was not appropriate for the exchange of traffic between the two companies because under such a method, SWBT would not be compensated for costs incurred to terminate calls originating on AT&T's network. Further, SWBT did not agree to AT&T's proposal to eliminate access charges for those areas outside a mandatory calling zone.

Summary of AT&T testimony: AT&T witness Phil Gaddy testified that Bill and Keep should be adopted as a reciprocal compensation resolution for termination of local traffic. However, if compensation rates are adopted, a TELRIC-based rate is required by the FCC.

According to Mr. Gaddy, based on the findings of the FCC, AT&T is proposing the Commission impose a Bill and Keep mechanism for traffic exchange between AT&T and SWBT for at least the first nine months after initiation of the passage of commercial traffic between the companies. After the initial nine month period, AT&T proposes that the Bill and Keep mechanism remain in place unless and until a significant continuing disparity in the levels of traffic, terminated on the respective networks, can be demonstrated.

Mr. Gaddy testified that the FCC at Paragraph 1055 provided for three potential methods of reciprocal compensation which are: (1) economic cost studies prepared using TELRIC methodology; (2) the State Commissions could adopt a default price based on default proxies established by the FCC; or (3) the State Commission may order a Bill and Keep arrangement.

According to Mr. Gaddy, the FCC found there was a presumption that each carrier's cost would be presumed to be the same unless a new entrant demonstrated otherwise. FCC Rule § 51.711(b). Second, in order to establish a Bill and Keep mechanism, the FCC allowed the State Commission to establish a presumption that the level of traffic terminating on the prospective networks would be balanced. As there was no evidence that the traffic would not be balanced, the Commission should adopt a Bill and Keep mechanism for at least the first nine months after initiation of the passage of commercial traffic between the companies.

Mr. Gaddy further stated that although WACP and EAS offerings are currently mandatory in Oklahoma, if optional calling areas are established, then, for purposes of reciprocal compensation, traffic from optional extended calling areas should be treated as local traffic. Mr. Gaddy stated that this position is supported in the light of the FCC's findings that the functions required are the same regardless of the call type.

Summary of SWBT testimony: Mr. Eugene F. Springfield testified on behalf of SWBT regarding these issues. Mr. Springfield testified that bill-and-keep was not an appropriate method of cost recovery for the transport and termination of local exchange traffic between AT&T and SWBT. Based on studies performed by the SWBT, the traffic patterns would not be balanced. Further, since the rates to be charged by each company would be reciprocal, the rates for transport and termination of traffic would not be symmetrical. Mr. Springfield testified further that the Commission's historical definition of a local calling area did not include optional areas selected by customers. Rather, the Commission's historical definition of local traffic was based on the mandatory calling scope of all customers within an area.

Findings and Recommendations: Based upon the testimony, the federal Act and applicable provisions of the FCC Order, the Arbitrator finds that § 251(b)(5) of the federal Act imposes an obligation on both AT&T and SWBT to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Further, the Arbitrator finds that § 252(d)(2) of the federal Act mandates that this Commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier, and that such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls. While the federal Act does not preclude arrangements which waive mutual recovery of costs, such as bill-and-keep arrangements, the Arbitrator recommends that the Commission reject such an arrangement at this time.

The Arbitrator recognizes that the FCC concluded states may impose bill-and-keep arrangements if traffic is roughly balanced in the two directions, and neither carrier has rebutted the presumption of symmetrical rates. The Arbitrator finds that testimony by SWBT's witness demonstrated that different rates would be applicable to the termination of calls on each carrier's networks because of the different design of each carrier's network. The Arbitrator finds that AT&T did not adequately rebut the fact that rates would be asymmetrical between the two companies. Therefore, the Arbitrator finds that SWBT has sufficiently rebutted the presumption that the rates for transport and termination will be symmetrical. Further, the Arbitrator is unconvinced that traffic between the two companies will be roughly balanced. AT&T was unable to provide any studies or support for its belief that such traffic would be roughly balanced. Therefore, the Arbitrator recommends that the Commission require the companies to implement a reciprocal method of compensation for the transport and termination of traffic between the two companies' networks.

The Arbitrator further finds that the FCC found that bill-and-keep arrangements are not economically efficient because they distort carriers' incentives, encouraging them to overuse competing carriers' termination

facilities by seeking customers that primarily originate traffic. The Arbitrator concurs with the FCC and recommends that the Commission refrain from creating such marketplace distortions wherever possible in order to provide a foundation for new entrants to develop their entry plans. Accordingly, the Arbitrator believes that a method of compensation that provides for the mutual recovery of costs to transport and terminate the other carriers' traffic is in the public interest. Therefore, the Arbitrator recommends that the Commission adopt a reciprocal compensation method which provides for mutual recovery of costs. The interim rates which were proposed by SWBT should be used until such time as cost studies are performed and a subsequent hearing is held on the permanent rates in this Cause.


The Arbitrator finds that reciprocal compensation obligations imposed by the federal Act and the Commission's rules should apply only to traffic that originates and terminates within a local area as defined herein below. Further, since the federal Act did nothing to disrupt the provision of access services, the Arbitrator finds that, consistent with § 1034 of the FCC Order, the reciprocal compensation provisions of § 251(b)(5) and OAC 165:55-17-15 for transport and termination of traffic do not apply to the transport or termination of interexchange traffic.

The Arbitrator finds that § 1035 of the FCC Order recognized the authority of state commissions to determine what areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under § 251(b)(5), consistent with the Commission's historical practice of defining local service areas for incumbent LECs. The Arbitrator further finds that OAC 165:55-13-10 embodies the Commission's historical practice of defining local service areas for incumbent LECs as the area in which all end-users of a given class are served at uniform rates. The Arbitrator finds that because optional EAS and/or WACP services will not apply a uniform rate to all end-users of a given class, such services do not fall under this definition of local area for purposes of applying reciprocal compensation obligations under section 251(b)(5) and OAC 165:55-17-15. Therefore, the Arbitrator recommends that the Commission limit the application of reciprocal compensation obligations to areas covered by mandatory calling zones in which all end-users of a given class pay a uniform rate. The Arbitrator further recommends that access charges be applied to optional EAS areas if such options are made available in Oklahoma.

Conclusion

The Arbitrator has made the findings and recommendations, set forth above, based upon the issues and positions which were somewhat fluid. Issues would arise and issues would settle not only after the filing of the Application for Arbitration, but also during the actual proceedings, after the proceedings, and prior to the recommendations being made by the Arbitrator. Therefore, if additional issues are settled between the parties, the Arbitrator expects the parties to file a Joint Stipulation so that the Commissioners will not expend the time and effort to decide a question which has been settled by the parties.

The foregoing Findings and Recommendations are the Report and Recommendations of the Arbitrator.


ROBERT E. GOLDFIELD
Arbitrator

November 13, 1996
DATE

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF AT&T COMMUNICATIONS) CAUSE NO. PUD 960000218
OF THE SOUTHWEST, INC., FOR COMPULSORY)
ARBITRATION OF UNRESOLVED ISSUES WITH)
SOUTHWESTERN BELL TELEPHONE COMPANY)
PURSUANT TO § 252(b) OF THE)
TELECOMMUNICATIONS ACT OF 1996) ORDER NO. **407704**

HEARING: October 14, 15, 17, 22 and 31, 1996, before the
Arbitrator and December 2, 1996, before the
Commission *en banc*

APPEARANCES: O. Carey Epps, Jack P. Fite, Jay M. Galt, Margie
McCullough and Alistair Dawson, Attorneys for AT&T
Communications of the Southwest, Inc.;

Roger K. Toppins, Kendall Parrish, Curt Long and
Michael C. Cavell, Attorneys for Southwestern Bell
Telephone Company;

George M. Makohin, Attorney for American
Communication Services of Tulsa, Inc. and Western
Oklahoma Long Distance, Inc.;

Mary Kathryn Kunc and Ron Comingdeer, Attorneys for
the Oklahoma Rural Telephone Coalition;

Ronald E. Stakem and Stephen F. Morris, Attorneys
for MCI Telecommunications Corporation;

Nancy M. Thompson and Martha Jenkins, Attorneys for
Sprint Communications Company, L.P.;

David Jacobson, Attorney for Terral Telephone
Company;

Rick D. Chamberlain and Mickey Moon, Assistant
Attorneys General, Office of the Attorney General,
State of Oklahoma;

John W. Gray, Senior Assistant General Counsel,
Public Utility Division, Oklahoma Corporation
Commission.

ORDER REGARDING UNRESOLVED ISSUES

BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma ("Commission") being regularly in session and the undersigned Commissioners being present and participating, there comes on before the Commission for consideration and action the appeals to the Report and Recommendations of the Arbitrator filed by AT&T Communications of the Southwest ("AT&T"), Southwestern Bell Telephone Company ("SWBT"), and the Oklahoma Rural Telephone Coalition; the statements of positions filed by the Commission Staff, and MCI; and the motion of SWBT to exclude the appeal of the Oklahoma Rural Telephone Coalition and statements of position of MCI.

PROCEDURAL HISTORY

On July 29, 1996, AT&T filed an Application for arbitration of certain unresolved issues regarding an interconnection agreement between AT&T and SWBT. The Application was brought pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 ("the federal Act") and Oklahoma Administrative Code ("OAC") 165:55-17-7. In its application, AT&T requested this Commission to decide by arbitration, specified disputed issues that negotiations between the parties had failed to resolve.

The federal Act seeks to promote local exchange telephone competition. It requires that an incumbent local exchange carrier ("ILEC") negotiate with a carrier ("competitive LEC") that seeks to interconnect with the ILEC or to purchase unbundled network elements or telecommunications services for resale from the ILEC. In the event those parties are not able to agree on all issues, Section 252(b) of the federal Act authorizes either party to request arbitration of the disputed issues before the state regulatory commission. This Commission has also promulgated rules to facilitate local exchange competition; OAC 165:55-17-1 through 165:55-17-35.

The disputed issues which AT&T brought for resolution in arbitration were stated in its Application. AT&T requested that the Commission: (1) determine what telecommunications services SWBT should offer for resale; (2) establish what discounted wholesale rates should apply for resale of services; (3) determine what "unbundled" network elements should be provided; (4) determine where interconnection is technically feasible; (5) establish cost-based rates for interconnection; (6) establish reciprocal compensation and meet point arrangements for transport and termination of traffic exchange between the respective carriers' networks; (7) require SWBT to provide other essential facilities and services such as number portability, collocation and nondiscriminatory access to poles, ducts, conduits and rights-of-way; and (8) require SWBT to provide dependable and flexible on-line electronic interfaces.

On August 12, 1996, the Commission assigned the AT&T application to the Commission appointed arbitrator, Robert E. Goldfield, to hear the evidence and make recommendations on the disputed issues to the Commission. On August 9, 1996, a prehearing conference was held before arbitrator Goldfield. As a result of that conference, Order No. 404220 was entered establishing a procedural schedule consistent with the requirement of 47 U.S.C. § 252(b)(4)(C) that required the arbitration be concluded no later than nine months following SWBT's receipt of AT&T's request for negotiations (i.e., December 14, 1996). The

procedural schedule also provided for discovery, an additional prehearing conference and, the date for the hearing on the merits.

A number of requests for intervention were filed. Order No. 404220 provided that the Attorney General and the Public Utility Division were permitted to intervene as parties, with the right to present testimony and evidence and to cross-examine witnesses. Other intervenors were limited to attendance at the hearing, access to materials filed in the case, and the filing of a written statement of position in accordance with the procedural schedule.

Order No. 404220 also provided that all hearings in the case should be *in camera*. Attendance at the hearings was limited to parties and their employees and representatives who executed a Commission-approved Confidentiality Agreement.

On October 7, 1996, a second prehearing conference was held before Judge Goldfield. As a result of that conference, Order No. 406117 was issued bifurcating this proceeding. A separate hearing will be scheduled at a later date to present cost studies and to determine permanent rates for unbundled network elements, customer change charges and interim number portability. The wholesale discount rate for resold services, non-cost issues and interim rates for unbundled network elements and transport and termination of traffic are to be determined in this portion of the cause. By agreement of the parties, and pursuant to Order No. 406117, all interim rates set now will be subject to true-up after the Commission conducts future hearings and approves permanent rates.

On October 14, 1996, the hearing of the Arbitrator began and continued through October 18, 1996. The Arbitrator's Report and Recommendations was filed November 13, 1996. Subsequently, appeals and supporting briefs were filed by SWBT, AT&T and the Oklahoma Rural Telephone Coalition. The Commission Staff, the Oklahoma and MCI each filed a statement of position. On November 21, 1996, SWBT filed a motion to exclude the appeal of the Oklahoma Rural Telephone Coalition and statement of position of MCI.

On December 2, 1996, the Commission *en banc* took oral arguments on the filed appeals and statements of position. The Commission also heard oral arguments on SWBT's motion to exclude the appeal of the Oklahoma Rural Telephone Coalition and statement of position of MCI. At the close of all of the arguments, the Commission took the matter under advisement and continued the cause to the next day for deliberations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds that it has jurisdiction over the above entitled cause pursuant to 47 U.S.C. Section 252, Art. IX, Section 18 of the Oklahoma Constitution, 17 O.S. (1996) Section 131 et. seq. and OAC 165:55-17. Further, the Commission finds that SWBT's

motion to strike the appeal to the Oklahoma Rural Telephone Coalition and statement of position of MCI should be denied.

Further, the Commission finds the Report and Recommendations of the Arbitrator to be fair, just, reasonable, and supported by the evidence presented, with the exception of the issues addressed below. Further, the Commission finds that the Report and Recommendations of the Arbitrator should be adopted and approved by the Commission with the exception of the issues addressed below. A copy of the Report and Recommendation of the Arbitrator is attached hereto as Attachment A and incorporated herein by reference.

Dark Fiber

The Commission finds that the Arbitrator's recommendation, that dark fiber be made available to AT&T as an unbundled element, at any technically feasible point where space and power are available, should be adopted by the Commission. However, the Commission further finds that for purposes of clarifying and fully resolving this issue, it is necessary that the Commission define the term "regulated" in this context, for purposes of identifying which dark fiber might be subject to unbundling. Therefore, "regulated fiber" is, "fiber, owned or operated by SWBT, that is used and useful in the provisioning of telecommunications services and is recognized as telephone plant asset in either SWBT's rate base, or on SWBT's books and records. Furthermore, the Commission finds that to the extent dark fiber is included in SWBT's business plan for regulated services, or has been laid for purposes of ensuring its availability for SWBT to meet its reliability and/or "Carrier of Last Resort" obligations, it is deemed to be "useful" for purposes of being included in the above definition of "regulated fiber". In addition, the Commission further finds that to the extent dark fiber is available as an unbundled element, the price of such element should be determined utilizing the "TELRIC" methodology, unless otherwise agreed to by the parties.

Collocation:

The Commission finds the Arbitrator's recommendations concerning collocation to be fair and reasonable, however, the Commission finds that the Arbitrator's general recommendation that physical collocation should be allowed where space and power are available, should apply equally to SWBT's huts and vaults. Therefore, the Commission finds that the Arbitrator's Findings and Recommendations, on page 12 of the Arbitrator's Report and Recommendation should be adopted by the Commission with the exception that the second paragraph should be deleted and that physical collocation in SWBT's huts and vaults should be allowed where space and power are available. Further, the Commission finds

that implicit in the Arbitrator's recommendation on collocation is that safety and security considerations should be taken into account.

Unbundling:

The Commission finds that the Arbitrator's recommendation on unbundling should be adopted by the Commission, however, the Commission finds based on the arguments presented by the parties on appeal, further clarification is necessary. The Commission finds that there should not be any restrictions placed on what unbundled elements may be purchased and reconfigured.

INTERIM NUMBER PORTABILITY

The Commission finds the Arbitrator's recommendation on interim number portability should be adopted by the Commission, however, the Commission finds that the term "telecommunications service provider" needs to be clarified. In OAC 165:55, the Commission defined telecommunications service provider as, " all authorized providers of local exchange service, whether an incumbent local exchange company or a competitive local exchange company". However, in the Federal Communications Commission ("FCC") Docket No. CC 96-98, telecommunications service provider is defined much broader to include not only local exchange companies, but to include interexchange carriers as well as others. Therefore, the Commission finds that the broader FCC definition of telecommunications service provider should be adopted.

MISCELLANEOUS:

Additionally, since the findings in this order are based upon only a portion of the interconnection agreement, the Commission finds that the Commission may modify any position taken in this order, upon its review of the full interconnection agreement, after notice and hearing. The Commission finds that this section is not intended to allow the parties to relitigate any issue decided in the arbitration.

Further, the Commission finds that the findings in this arbitration should not have any effect on any common carrier except for SWBT and AT&T.

ORDER

IT IS THEREFORE THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that SWBT's motion to strike the appeal of the Oklahoma Rural Telephone Coalition and the statement of position of MCI is hereby denied.

IT IS FURTHER THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that the Report and Recommendation of the Arbitrator is hereby expressly adopted by the Commission except for the issues specifically addressed in the Commission's findings above.

IT IS FURTHER THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION

that the modifications to the Arbitrator's Report and Recommendation as stated above are hereby expressly adopted.

IT IS FURTHER THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that for the purpose of this proceeding, the Commission adopts the definition of "telecommunications service provider" as defined in the First Order and Report of the Federal Communications Commission, Docket No. CC 96-98.

IT IS FURTHER THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that the Commission expressly retains the right to modify any position taken in this matter, after a review of the full interconnection agreement, after notice and hearing.

IT IS FURTHER THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that the finding in this arbitration shall not effect any common carrier except for SWBT and AT&T.

CORPORATION COMMISSION OF OKLAHOMA

Cody L. Graves
Cody L. Graves, Chairman
(Concurring & dissenting opinion attached)

Bob Anthony
Bob Anthony, Vice-Chairman

Ed Apple
Ed Apple, Commissioner

DONE AND PERFORMED this 12th day of December, 1996.
BY ORDER OF THE COMMISSION:

Charlotte W. Flanagan
Charlotte W. Flanagan
Commission Secretary

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF AT&T COMMUNICATIONS)
OF THE SOUTHWEST, INC. FOR COMPULSORY)
ARBITRATION OF UNRESOLVED ISSUES WITH)
SOUTHWESTERN BELL TELEPHONE COMPANY) CAUSE NO. PUD 960000218
PURSUANT TO SECTION 252(b) OF THE)
TELECOMMUNICATIONS ACT OF 1996)

SPECIAL CONCURRING AND DISSENTING OPINION

The Commission's action today marks the completion of a significant step in the process toward the realization of full competition in the local exchange marketplace. With the Commission's resolution of the disputed issues in this cause, the terms and conditions for interconnection between Southwestern Bell and AT&T can be inserted into an interconnection agreement for this Commission's approval. As a result, consumers in Oklahoma will soon enjoy an additional choice in their provider for local telephone service. For this reason, I generally concur in the decisions reached by the Commission to resolve the disputed issues between the parties.

However, there is a provision in the Order that, in my opinion, runs afoul of Congress' intent underpinning the Telecommunications Act of 1996 (the "Act"), Pub.L.No. 104-104, 110 Stat. 56; codified at 47 U.S.C. Section 201 et seq. The flaw arises as a result of my colleagues' decision to allow new entrants such as AT&T to combine unbundled network elements in any manner they choose, including doing so to provide the same service as Southwestern Bell provides for resale. Under the Act and Section 165, Chapter 55, Subchapter 17 of the Oklahoma Administrative Code

(the "Rules"), different pricing structures are enumerated for new LEC who buys unbundled network elements, or pieces of the network, versus a new LEC who buys an entire service for the purpose of resale. The price for a network element is based on the cost of providing that element and may include a reasonable profit. 47 U.S.C. Section 252(d)(1) and OAC 165:55-17-27(a). The price for an entire service purchased for resale is the retail rate of the service minus costs that will be avoided by the incumbent LEC. Section 262(d)(3) and 17-27(o). Both the Act and our Rules contemplate that a new LEC that purchases elements will provide telecommunications service employing a combination of its own facilities and the incumbent LEC's facilities via interconnection at technically feasible points. See 47 U.S.C. Section 251(c)(3) and OAC 17-5(c)(3). A new LEC that purchases an entire service for resale, however, will not be required to provide any facilities of its own because it has purchased the service as a "turn-key" package from the incumbent LEC.

I firmly believe that it was the intent of Congress in passing the Act, and our intent in approving the Rules, to distinguish retail-based resale pricing from cost-based network element pricing. The purpose of this distinction was to encourage new LECs through lower cost-based pricing to invest in new local facilities. The intended result of this investment is new and improved telecommunications products and services, along with new jobs for our citizens. Those new LECs that were not inclined to invest in Oklahoma's telecommunications infrastructure could still compete

but would have to pay the higher price of discounted retail rates to do so. This is only fair since the capital investment and commitment to Oklahoma of a new LEC involved in facilities-based competition is significantly greater than the investment and commitment of the resale service provider.

Unfortunately, the Majority's decision disregards this important distinction and gives AT&T a competitive pricing advantage. Where a retail rate for one of Southwestern Bell's services is set above the cost for that service, such as for business service, AT&T will be able to gain an advantage by purchasing the network elements necessary to replicate that service at a cost-based rate rather than at the higher wholesale discount rate. In this manner, AT&T can cleverly circumvent the intent of both Congress and this Commission to encourage facilities-based competition.

Our goal in approving the Rules was to create a competitive environment in which companies were incented to improve telecommunications service by improving the network. I believe that in passing the Act, Congress had a similar goal. See interest of Amici Curiae at 12-13, Iowa Util. Bd., et al. v. Fed. Comm. Comm'n. et al., No. 96-3321, (8th Cir. filed September 11, 1996). There is a place for resale, to be sure, but we did not intend to incent resale at the expense of facility-based competition where innovation is expected to take place. The unintended consequence of the Majority's decision is that it creates for AT&T and other new LECs a strong disincentive to provide facilities here in

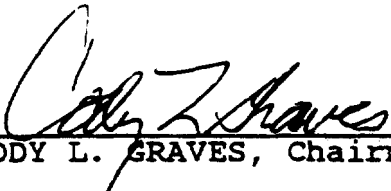
Oklahoma.

Permitting new LECs to purchase unbundled elements that simply reproduce a service offered for resale accomplishes nothing other than to permit resellers to reap a windfall by taking advantage of cost-based pricing intended for facilities-based providers. In attempting to create a benefit for consumers by allowing new LECs this pricing advantage, the Majority opinion ironically will have the opposite effect. New LECs will not invest in the network so long as they enjoy the competitive advantage of buying network elements at a price well below what the incumbent LECs can offer. Likewise, the incumbent LECs will refuse to spend capital to improve their networks if it only means that their competitors will reap the benefits of those expenditures. In fact, not only will we fall short of our goal of seeing improved telecommunications products and services, but the incumbents may be hampered in their ability to invest adequately to maintain their networks, resulting in actual deterioration of the quality of service.

My colleagues' decision would also allow AT&T to avoid the joint marketing restrictions imposed by the federal Act. Section 271(e) of the federal Act precludes carriers with greater than five percent of the nation's presubscribed access lines from jointly marketing resold local exchange services with interLATA services until the Bell operating company receives interLATA relief or three years, whichever is less. Allowing AT&T to rebundle network elements into a service available at resale would circumvent this carefully drawn statutory limitation imposed on AT&T. I do not

believe that Congress intended to allow AT&T to avoid this limitation by providing the same service through network elements as opposed to resale.

In the end, the lesson to be learned is that favoring either the new LECs or the incumbent LECs will lead to an unfavorable outcome for the Oklahoma consumer. Maintaining a balance among competitors is the most efficient and equitable way to grow a competitive local telecommunications market and achieve the optimal result for Oklahoma consumers.



CODY L. GRAVES, Chairman